

Present Claim 2 relates to processes for producing such crystals. Present Claims 3, 4, and 15 relate to granules which contain C-type crystals of Neotame, and present Claims 5-13 relate to compositions which contain C-type crystals of Neotame.

The C-type crystals of the present claims are distinct from the A-type crystals afforded by one of the cited references. Moreover, the inventors have surprisingly found that the presently claimed crystals exhibit an increased rate of dissolution in water, as compared to A-type crystals, even though the C-type crystals contain less water than the A-type crystals. Accordingly, this reference cannot affect the patentability of the present claims.

In the Advisory Action dated December 17, 2002, the rejection of Claims 1-15 under 35 U.S.C. § 103 (a) in view of U.S. patent No. 4,810,818 (Wakamatsu et al) in further view of U.S. Patent No. 5,480,668 (Nofre et al) was maintained. However, Applicants submit that this rejection should be withdrawn in view of the following remarks and the Declaration of Kashiwagi which was filed on November 19, 2002.

As conceded on page 3 of the Official Action dated May 31, 2002, Wakamatsu et al is concerned only with Aspartame and is completely silent in regard to Neotame. Nofre et al discloses certain derivatives of Aspartame, including Neotame. However, there is no teaching in Nofre et al of the presently claimed C-type crystals. In fact, as shown in the Declaration of Nagashima filed on September 21, 2001, the Neotame produced according to Nofre et al exists in either an amorphous state or as A-type crystals.

Apparently, the position in the Advisory Action is that one of skill in the art would have been motivated to prepare crystal of Neotame with improved solubility properties. However, motivation is not enough to satisfy the requirements for a showing of obviousness. The skilled artisan must not only be motivated to achieve a goal but also must have a

reasonable expectation of success for reaching that goal. However, the C-type crystal form of the present claims are a new type or form of crystal which is related to the A-type crystal form as a polymorph or pseudo-polymorph. Thus, one of skill in the art would not have had a reasonable expectation of success for obtaining the presently claimed C-type crystals of Neotame.

In support of these assertions, Applicants again cite the Declaration of Kashiwagi filed on November 19, 2002. As explained in paragraph no. 5 of the Declaration of Kashiwagi, polymorph or pseudo-polymorph related crystal forms exhibit different physical properties which can have a large influence on the industrial processing of the compound. Moreover, the discovery of a new crystal form of a known compound not only is unexpected but also can be commercially important. In fact, no prior art reference has been cited which stands for the proposition that the mere existence of one crystal form for a given compound would suggest the existence of another, different crystal form for that compound. Thus, there is nothing in the prior art which would have instilled a reasonable expectation of success for achieving the presently claimed crystals in one of ordinary skill in the art.

Accordingly, the rejection should be withdrawn.

Applicants again submit that the application is in condition for allowance, and early notification of such action is earnestly solicited.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Stephen G. Baxter' with a stylized flourish at the end.

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